

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.939 OF 2002

Shri.Amin Imamsaheb Inamdar ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr.P.R.Arjunwadkar for Petitioner.

Mr.K.V.Saste, A.P.P. for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

MARCH 18, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Saste, A.P.P. waives notice for Respondent No.1.

3. As short question is involved, the matter is taken up for final disposal forthwith, by

consent.

4. This Petition takes exception to the order passed by the Judicial Magistrate First Class, Court No.2, Solapur dated September 11, 2001 below Exhibit No.18 and 20 in R.C.C. No.186 of 1998. Indeed, the Petitioner filed Application for discharge after framing of the charge. However, the main grievance of the Petitioner was that the charge has been framed by the Trial Court, without following the procedure under Section 239 and 240 of the Criminal Procedure Code, in particular, of affording opportunity to the Petitioner of hearing, before framing of charge.

5. The fact that the procedure under Section 239 and 240 of the Code has not been complied with, is not in dispute. Even the lower Court in the impugned order, and the Revisional Court in the order dated 2nd April 2002, which Revision was carried against the order passed by the Magistrate before the District Judge, have recorded that fact. In that sense, one thing is certain that charges

have been framed in respect of R.C.C.No.186 of 1998, without complying the provisions of Section 239 and 240 of the Code and without hearing the Petitioner before framing of charge. If that position is indisputable, then it necessarily follows that the trial cannot be permitted to proceed with the trial on the basis of the charge as framed.

6. Viewed in this perspective, this Petition succeeds by setting aside the order framing charge in R.C.C. No.186 of 1998 and instead, the Trial Court is directed to re-examine the matter from the stage of before framing of charge after following provisions under Section 239 and 240 of the Code. That be done as expeditiously as possible.

7. Petitioner shall appear before the Trial Court on 29th March 2005, on which date, the Court may proceed with the matter from the stage of before framing of charge, as aforesaid, or may fix the matter for further arguments on some other date, as may be convenient. In any case, the matter on the issue of framing of charge should be

proceeded with and decided within two months from the receipt of writ of this Court.

8. Rule made absolute on the above terms.

9. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.